Senate Bill 210 – Provide Penalties for Certain Communications for Dangerous Drug Prescriptions

Effective: October 1, 2011

What the Bill States: Senate Bill 210 creates a criminal offense for attempting to obtain a dangerous drug by making certain communications with a person authorized to write prescriptions as follows:

- A person commits the offense of 45-9-104: Fraudulently Obtaining Dangerous Drugs by knowingly or purposefully failing to disclose to a practitioner that the person has received the same or a similar prescription for a dangerous drug from another source in the prior 30 days.
- A person commits the offense of 45-9-104: Fraudulently Obtaining Dangerous Drugs by knowingly or purposefully communicating false or incomplete information to a practitioner with the intent to procure dangerous drugs.
- A communication described in the above instance is not privileged communication.

House Bill 250 – Repeal 46-13-109 to Conform with *State v. District Court of the 18th District*

Effective: April 7, 2011

What the Bill States: House Bill 250 repeals 46-13-109.

- As was ruled by the Montana Supreme Court in *State v. District Court of the 18th District*, the prosecutor is no longer required to provide notice of intent to use evidence of other crimes, wrongs, or acts pursuant to 404(b) of the Montana Rules of Evidence.

What the Bill Means: The prosecution is no longer required to provide notice of intent to introduce other crimes to the defense during the omnibus hearing.

House Bill 548 – Revising 46-18-203 Regarding Revocation of a Suspended or Deferred Sentence

Effective: April 20, 2011, and retroactively to all past revocations, in accordance with 1-2-109.

What the Bill States: House Bill 548 changes the law regarding whether a petition for a revocation of suspended or deferred sentence can be filed with the sentencing court before the period of suspension or deferral.

- Previously, according to 46-18-203, a petition for revocation could only be filed with the sentencing court during the period of suspension or deferral of the sentence. The law did not explicitly forbid the filing of petitions for revocation before the beginning of a period of suspension or deferral.
- In *State v. Stiffarm,* the Supreme Court ruled that a petition for revocation must be filed during the period of suspension or deferral, and cannot be filed before that period has begun. Within the decision, the Supreme Court invited the legislature to re-examine the issue.
- Consequently, the legislature has now changed the law to reverse *State v. Stiffarm* and allow for petitions of revocation to be filed before the period of suspension or deferral has begun.

What the Bill Means: The bill reverses the Supreme Court decision of *State v. Stiffarm* and now allows petitions for revocation to be filed before the period of suspension or deferral has begun.

Senate Bill 76 – Provide Parole For Those Sentenced to Custody of DPHHS and In State Facility

Effective: October 1, 2011

What the Bill States: Prisoners sentenced to the custody of DPHHS and confined in a State of Montana facility are now eligible for parole according to the rules of parole eligibility in 46-23-201. The parole board may not release that person if they feel the person can be detrimental to himself or herself or society.

House Bill 126 – Amend Youth Court Act to Clarify District Court Sentencing Authority

Effective: October 1, 2011

What the Bill States: House Bill 126 gives the district court wider authority on offenses under which it may sentence a youth when the youth is already appearing in that court in accordance with 41-5-206

- Previously, if a youth appeared in district court for an offense outlined in 41-5-206, and was found guilty of that offense, the district court would sentence the youth for that offense. Any other, lesser offenses committed during commission of the crime that led to the youth appearing in district court were not the responsibility of the district court at sentencing.
- Now, if a youth is found guilty of the offense for which the youth is appearing in district court according to 41-5-206, the district court will sentence the youth for that offense AND sentence the youth for all other, lesser offenses committed during the commission of the offense which caused the youth to appear in district court.
- Also, if a youth is acquitted of the offense for which the youth is appearing in district court according to 41-5-206, the district court will sentence the youth for any lesser offenses for which the youth was found guilty, even though the youth was acquitted of the offense that landed them in district court.

What the Bill Means: The district court now holds the responsibility to sentence a youth if that youth is found guilty of lesser crimes that, on their own, would be sentenced in youth court, as long as the youth was first required to appear in district court according to 41-5-206.

Senate Bill 149 - Create the Crime of Predatory Loitering for Convicted Sex Offenders

Effective: October 1, 2011

What the Bill States: Senate Bill 149 creates a new misdemeanor offense to prevent convicted sex offenders from 'predatory loitering.' The bill states:

- The defendant in question must have been previously convicted of either a predatory sexual offense, as defined in 46-23-502, or sexual abuse of children
- The defendant must knowingly or purposely loiter in the vicinity of a pervious victim, or any frequented by minors of an age similar to the age of the victim in a previous offense.
- The defendant must have been asked to previously leave the area by a "person in authority," which is defined in the new statute.
- In order for charges to be brought against the defendant, proof must exist that the person in authority made a report to a law enforcement agency, and the agency must have documentation of the report.
- A person convicted of a first offense of predatory loitering may be fined not more than $500 and imprisoned for not more than 6 months. Second and subsequent convictions carry a fine of not more than $1,000 and imprisonment for not more than 1 year.

What the Bill Means: In summation, the bill creates a new law to protect children from predatory sex offenders, and outlines the prerequisites for charges to be brought against an individual.

House Bill 185 – An Act to Ban Synthetic Marijuana and Salvia

Effective: April 8, 2011

What the Bill States: House Bill 185 bans synthetic marijuana and salvia as follows:

- All forms of synthetic marijuana, including the drug known as "salvia," have been established as Schedule I drugs.
- All provisions in the law establishing possession of certain amounts of marijuana constituting a misdemeanor, and not a felony, do not apply to the synthetic marijuana ban enacted in HB 185.

What the Bill Means: The bill criminalizes all forms of synthetic marijuana, making them Schedule 1 drugs, and unlike small amounts of actual marijuana, treats their possession as a felony.

Senate Bill 152 – Increase the Penalty for Second and Subsequent Offenses of Sexual Assault

Effective: October 1, 2011

What the Bill States: Senate Bill 152 changes the penalties for second and subsequent offenses of sexual assault in the following way:

- Previously, all convictions of sexual assault as charged under 45-5-502 carried the same penalty: A fine not to exceed $500 and imprisonment not to exceed 6 months.
- According to Senate Bill 152, the first conviction of sexual assault under 45-5-502 would carry the previous penalty.
- A second conviction of sexual assault under the same statute will carry a penalty of a fine not to exceed $1,000 and imprisonment not to exceed 1 year.
- A third and subsequent conviction of sexual assault will carry a penalty of a fine not to exceed $10,000 and imprisonment not to exceed 5 years.

What the Bill Means: Persons convicted of sexual assault, according to 45-5-502 more than once will face stiffer penalties for subsequent violations.

Senate Bill 68 – Clarify the Duty of Driver in Accident Remain at the Scene

Effective: October 1, 2011

What the Bill States: Senate Bill 68 states:

- Any driver involved in an accident with another person or deceased person is required to immediately stop at the accident scene.
- If the person in the accident is injured, deceased, or otherwise incapacitated, the driver must remain on the scene until an on-duty peace officer gives the driver permission to leave. The driver may leave beforehand only for the purpose of seeking emergency medical care for any person involved in the accident.
- The penalty for not remaining at an accident, except for those accidents resulting in death or injury, is:
    - For the first offense, a fine of not less than $200 and not more than $300 as well as imprisonment for not more than 20 days.
    - For the second offense within 1 year of the first, a fine of not less than $300 or more than $400, and by imprisonment for not more than 30 days.
    - For a third offense, within 1 year of the first, a fine of not less than $400 or more than $500, and imprisonment for not more than 6 months.
- The penalty for any driver not remaining at an accident in which a person has been injured is:
    - A fine of not less than $100 or more than $5,000 and imprisonment for not less than 30 days or more than 1 year
- The penalty for any driver not remaining at an accident in which a person has been killed is:
    - A fine of not more than $50,000 and imprisonment for not less than 1 year or more than 10 years.

What the Bill Means: The penalties for a driver not remaining at an accident scene are now tied to the severity of the accident, with the penalties becoming greater as the accident becomes more severe.

Senate Bill 153 – Allow Judges' Discretion for Appointed Counsel in Guardian Ad Litem Laws

Effective: October 1, 2011

What the Bill States: Senate Bill 153 provides discretion for a judge concerning the appointment of counsel in abuse and neglect petitions in the following way:

- When a petition is filed pursuant to the rules governing abuse and neglect petitions as stated in 41-3-422, any child or youth involved in the proceeding shall immediately be assigned counsel by the court when a guardian ad litem is NOT appointed for the child or youth.
- Conversely, in the same proceedings, the court has the discretion to deem it appropriate to appoint counsel for a child or youth when a guardian ad litem is already appointed for that child or youth.
- All parties of the proceedings are eligible to be assigned counsel through the office of the public defender pursuant to Title 47, Chapter 1.

What the Bill Means: During proceedings involving abuse and neglect petitions, the court now has the discretion to assign the office of the state public defender to represent a child even if a guardian ad litem is already representing the child.

Senate Bill 304 – Generally Revise Dependency and Neglect Laws

Effective: October 1, 2011

What the Bill States: Senate Bill 304 makes the following revisions to dependency and neglect laws:

- The State of Montana is provided jurisdiction over dependency and neglect cases whenever a youth or youth's parent or guardian resides in Montana.
- The State of Montana is provided jurisdiction over dependency and neglect cases if a whole or part of the abuse and neglect occurred in Montana, and the youth or youth's parent or guardian resided in Montana within 180 days before the filing of the petition.
- Venue is proper in the county in which the youth was located or has resided within 180 days before filing of the petition, or a county where the youth's parent or guardian resides or has resided within 180 days before the filling of the petition.
- All other rules in statute regarding jurisdiction of the State of Montana are still intact.
- A professional or official with the responsibility to report suspected cases of abuse or neglect must report the matter, regardless of the identity of the person suspected of causing the abuse or neglect.
- If a child is removed from a home due to the suspicion of immediate harm to the child, the district court MAY order further relief before the parents appear before the court.
- In a case in which it appears the child is abused or neglected or in danger of being abused or neglected, the county attorney, attorney general, or attorney hired by the county may file a petition for immediate protection and emergency protective services.
    - The petition and affidavit must contain information, if any, regarding statements made by the parents about the facts of he case.
- If from the alleged facts presented in the affidavit, it appears to the court that there is probable cause, the judge shall grant emergency protective services until the adjudication hearing or the temporary investigative hearing.
    - If it appears from the alleged facts contained in the affidavit that there is insufficient probable cause, the court shall dismiss the petition.

- If the parents, legal guardian, or person having custody of the children disputes the issues or facts in the affidavit, the person may request a contested show cause hearing within 10 days following service of the petition and affidavit.
- If the court finds probable cause in a petition requesting emergency protective services, the court may issue an order for immediate protection of the child.
    - The bill removes the provision in statute that the person filing the petition for immediate protection has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child.
- All services and rules should also conform to the federal Indian Child Welfare Act.

What the Bill Means: The bill provides an easier route for the court to order emergency protective services, even before the parents are able to appear in court. The bill also establishes jurisdiction in cases in which parents suspected of abuse might flee to another state to avoid intervention.

Senate Bill 187 – Generally Revise Public Defender Laws

Effective: July 1, 2011

What the Bill States: Senate Bill 187 enacts a vast array of changes to the laws governing the Public Defender Agency, most notably concerning the collection of money from defendants. The bill makes the following changes:

- Section 46-8-101 of the MCA entitles all persons accused of a felony or misdemeanor in which incarceration is a sentencing option, the defendant has the right to a public defender if they can not retain private counsel. This bill creates a provision that, if the offense is a misdemeanor and during the defendant's initial appearance with the court, the court may order that incarceration not be exercised as a sentencing option if the person is convicted, and thus the person would not be eligible for a public defender.
- Section 46-8-113 of the MCA outlines provisions for payments by defendants for assigned counsel. Senate Bill 187 says that, as part of a sentence imposed on an individual, the court shall determine whether that individual has the ability to pay the costs of assigned counsel.
    - If the defendant pleads guilty of a misdemeanor, but not a felony, and is found to have the ability to pay, the defendant shall pay $250 for cost of counsel
    - If the defendant pleads guilty to a felony and is found to have the ability to pay, the defendant shall pay $800 for cost of counsel.
    - If the defendant goes to trial and is found to have the ability to pay, the defendant shall pay the costs incurred by the office of the state public defender during trial.
        - In the above stated circumstance, the office of the state public defender shall file with the court a statement of hours spent on the case and expenses incurred.
    - When a court is determining whether a defendant possess the ability to pay the costs of counsel, the court shall question the defendant's ability to pay and inform the defendant that purposely false or misleading statements to the court may result in criminal charges.
    - The court may not order a defendant to pay costs unless a defendant is able to pay the costs, though the court may find that a defendant can pay a portion, but not all, of the costs.

    - Payments will be made to the clerk of the sentencing court for allocation as provided in Title 46, Chapter 18, Part 2 of the MCA, and subsequently deposited in the public defender account as established in 47-1-110.
    - All costs imposed by the court must be included in the court's judgment.
- When a defendant is provided an application and affidavit by the court for public defender services, the court must inform the defendant that false statements on the affidavit, application, and financial statement are subject to criminal charges. The affidavit must also create language establishing that false statements may be prosecuted as perjury.

What the Bill Means: The bill changes the amount of money a court can charge a defendant found to have the ability to repay public defender costs. The bill also changes the language governing a court's ability to determine the client's ability to pay for services. Furthermore, the bill creates the possibility of not allowing certain clients access to public defender services should they be accused of a misdemeanor if the court orders, during an initial appearance, that incarceration will not be an option at sentencing.

House Bill 96 – Allow Recovery of Public Defender Costs in Involuntary Commitment Cases

Effective: October 1, 2011

What the Bill States: House Bill 96 revises Section 47-1-110 of the MCA, a section dealing with the recoupment of public defender costs in the following way:

- A developmentally disabled person facing an involuntary commitment under 53-20-112 of the MCA may be responsible for the costs of public defender services as part of a judgment.
- Formerly, only people with access to public defenders in criminal cases were subject to the repayment of services. This bill adds involuntary commitment cases.
- While section 46-8-113 of the MCA outlines the specific amount a judge may levy against a public defender client in the judgment, House Bill 96 DOES NOT include a specific amount for involuntary commitment cases.
- As stated in 47-8-113, the court may not sentence a defendant to pay for costs of assigned counsel unless the court determines that client is capable of paying for costs.
- The same determination of ability to repay costs used by judges in accordance with 46-8-113 shall be used in involuntary commitment cases as well.

What the Bill Means: In summation, defendants are now also subject to repaying the costs of an involuntary commitment case, should the judge rule that the defendant has the ability to pay such costs.